

167.2

DEPARTMENT OF CORRECTIONS

PURCHASE OF PERSONAL SECURITY SYSTEMS

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September 14, 1973

Honorable Pauline Davis
Assemblywoman, First District
Room 4148, State Capitol
Sacramento, California 95814

Dear Pauline:

Transmitted herewith is a report on the purchase of personal security devices by the Department of Corrections from one of its employees.

This employee developed the devices while employed as Chief of Plant Operations at the Soledad correctional facility. He is presently employed as Chief of Plant Operations at Folsom State Prison. As Chief of Plant Operations, he is responsible for overseeing the installation and maintenance of these systems and has an important role in their acquisition.

Chapter 1020, Statutes of 1972, included approximately \$244,000 (out of a total security and safety appropriation of \$374,775) for the purchase of devices of this type.

The Department of Corrections has obtained permission from the Department of General Services to acquire these devices from its employee on a non-bid basis and plans to include them in most of the correctional institutions.

The Auditor General's report points out that the employee's dual roles appear to be incompatible.

With my warm best wishes,

Sincerely,

Vince

VINCENT THOMAS, Chairman
Joint Legislative Audit Committee

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INTRODUCTION

Our review of expenditures charged to the special appropriation made by Chapter 1020/72 for implementation of recommendations in a December 1971 "Security and Safety Survey of the Department of Corrections", disclosed that the Department of Corrections was purchasing on a non-bid basis personal security systems manufactured and distributed by one of its employees, Mr. Robert E. Huber.

Mr. Huber's participation in the acquisition of the personal security devices for the Correctional Training Facility at Soledad and at Folsom State Prison while Chief of Plant Operations at the respective institutions appears to have created a conflict between his role as an employee of the state and his role as vendor to the state.

Mr. Huber developed the system while employed at the Correctional Training Facility, Soledad, as Chief of Plant Operations. He is currently employed by Folsom State Prison as Chief of Plant Operations.

The system was originally tested, installed and refined at Soledad and has so far been purchased for use at Soledad, Folsom, San Quentin, and Vacaville, and has been ordered for several other correctional institutions. The Department of Corrections indicated in a December 1972 letter to the Department of General Services that it intended to purchase the same (Huber) system for all of its institutions.

About \$244,000 of the \$374,775 appropriated by Chapter 1020/72 for implementation of the December 1971 "Security and Safety Survey of the Department

of Corrections" was for the cost of equipping the department's correctional institutions with personal security systems.

During March 1973, we visited nine correctional institutions which accounted for \$170,476 of the \$244,357 included in Chapter 1020/72 for personal security devices and found that approximately \$73,000 had been encumbered or expended by these institutions for personal security devices -- all of which were for devices sold by Mr. Huber.

SUMMARY OF FINDINGS

1. MR. HUBER'S DUTIES AS OWNER MANAGER OF CONLEY ENTERPRISE APPEAR TO BE INCOMPATIBLE WITH HIS DUTIES AS A STATE EMPLOYEE. (Page 11)

2. ALTHOUGH THE DEPARTMENT OF CORRECTIONS CITED THE URGENT NEED FOR PERSONAL SECURITY SYSTEMS AT SAN QUENTIN STATE PRISON AS A REASON FOR THEIR SOLE SOURCE PROCUREMENT FROM MR. HUBER, THE DEPARTMENT HAS SHOWN NO GREAT HASTE IN ACTUALLY INSTALLING THE DEVICES IN ITS OTHER INSTITUTIONS. (Page 11)

BACKGROUND

THE NEED FOR PERSONAL SECURITY DEVICES WAS RECOGNIZED FOLLOWING A 1967 ATTACK ON A CORRECTIONAL OFFICER AT THE CORRECTIONAL TRAINING FACILITY AT SOLEDAD

In late 1967, an attack was made on a correctional officer at the Correctional Training Facility at Soledad. The attempt to throw the officer from the top tier of one of the cell blocks was thwarted by another officer.

According to Mr. William G. Black, then Deputy Superintendent of the North Facility at Soledad and now Superintendent of the Conservation Center at Susanville, he discussed the incident with Mr. Huber, then Chief of Plant Operations at the North Facility at Soledad, and with others suggesting the need for the procurement of a device "which would enable an employee who found himself in a dangerous position to sound an alarm". According to Mr. Black, "Mr. Huber, at that time, stated he would, on his own, attempt to develop such a device".

Mr. Huber has indicated to us that he began development of the device in 1968. He has shown us, but declined to allow us to make a copy of, an affidavit dated December 12, 1969, signed by his wife and witnessed by two other persons, which asserts that he developed the system in his garage at his own cost and on his own time.

FOLLOWING THE JANUARY 1970 DEATH OF A SOLEDAD
CORRECTIONAL OFFICER, MR. HUBER, THEN SOLEDAD
CHIEF OF PLANT OPERATIONS, DEMONSTRATED A
PERSONAL SECURITY SYSTEM WHICH HE HAD DEVELOPED

On January 16, 1970, a correctional officer at the Central Facility, Soledad, was beaten to death by inmates.

According to Mr. William Black, then Deputy Superintendent at the Central Facility, one or two days after this death he "again contacted Mr. Huber and strongly urged him to go to work on developing an alarm device which would hopefully be of assistance in prevention of recurrence of such incidents".

Mr. Black informs us that "Mr. Huber did, at that time [mid-January 1970], begin work on this, and since we both lived in a residential area a short distance apart, I [Mr. Black] am personally aware that he did a great deal of work at his home in the development of an alarm device such as I suggested".

On February 16, 1970, according to Mr. Black, Mr. Huber informed him and other staff members that he had roughed out an alarm device. According to Mr. Black, the device was demonstrated to him the same day with the demonstration attended by Mr. C. J. Fitzharris, Superintendent of the institution; Mr. Donnelly, Associate Superintendent; Mr. Ray Brooks, Business Manager; and several other staff members.

THE PERSONAL SECURITY SYSTEM WAS INSTALLED
IN THE "Y" WING OF THE CENTRAL FACILITY AT
SOLEDAD FOR TESTING PURPOSES IN MARCH 1970

In a March 12, 1970 letter to Mr. Black confirming an earlier conversation that day, Mr. Huber referred to his earlier demonstration of his "original model" of the personal security system and informed Mr. Black that his "secondary model" would "be available in the near future for evaluation by the institution".

In connection with this demonstration, he asked for the following three understandings:

"I would like to have your understanding that this device will be made available for the institution for the sole purpose of determination of its feasibility in practical use from the institutional stand point of evaluation.

I do wish to have your understanding that I am in the process of securing U.S. Patent Grant Certificate for this invention, and therefore my condition must be understood that the device in subject here will be made available for the sole purpose stated above and not for any other purpose.

Your understanding toward this question will be a welcome sign along with the understanding that no one will open the device for servicing, examination or copying of its contents, or otherwise tamper with it during the evaluation period."

Mr. Black responded with the following letter dated March 18, 1970 authorizing Mr. Huber to proceed with installation of his personal security system in the "Y" Wing of the Central Facility at Soledad:

"In answer to your letter of March 12, 1970 regarding Security Alarm Device.

You are hereby authorized to install your Signal Device in "Y" Wing of Central Facility.

Your conditions will be adhered to as stated in subject letter.

Please keep my office informed as to progress of installation and any obstacles you may encounter."

Approximately nine months later, in a January 5, 1971 letter to Mr. R. A. Brooks, then Soledad Business Manager, Mr. R. H. Donnelly, then Soledad Deputy Superintendent, gave his assessment of Mr. Huber's device as being excellent:

"Our assessment of Mr. Huber's security device as wired in Ranier Hall is: overall excellent. Very enthusiastic staff response."

On January 18, 1971, the Soledad correctional facility issued a press release announcing the installation of "a new electronic warning device...for the protection of staff...".

THE DEPARTMENT OF CORRECTIONS URGED
SOLE SOURCE ACQUISITION OF THE
PERSONAL SECURITY SYSTEM FROM MR. HUBER

In a "purchase estimate" dated December 20, 1971, San Quentin State Prison requested the Office of Procurement of the Department of General Services to purchase a "Conley Model 'B'" personal security system for San Quentin Prison at a cost including tax of \$8,236.20 from Conley Enterprise, 3042 Standford Lane, El Dorado Hills, California. This is the system developed, made, and distributed by Mr. Huber. Conley Enterprise is the firm name used by Mr. Huber.

In a December 29, 1971 memorandum transmitting the December 20 "purchase estimate", the Department of Corrections urged sole source acquisition of the system. This letter from Mr. Thomas L. Smithson, Department of Corrections Chief of Facilities Planning, to Mr. Robert Vance, Assistant Purchasing Manager - Office of Procurement, stated that the department had determined that the same alarm system should be installed in all of the correctional institutions; that the department "had somewhat zeroed in on one personal alarm device at the Correctional Training Facility, Soledad, a couple of years ago and during the ensuing time [had] given it a pretty good shakedown"; and that the department's "needs for a system [were] too severe and critical...for any delay more than the normal delivery promised by the referenced vendor".

There was no mention in the department's letter that the proposed purchase was from an employee of the department.

CONLEY ENTERPRISE WAS RECOGNIZED BY AN EMPLOYEE
OF THE COMMUNICATIONS DIVISION OF THE DEPART-
MENT OF GENERAL SERVICES AS BEING OWNED BY AN
EMPLOYEE OF THE DEPARTMENT OF CORRECTIONS, JANUARY 1972

Upon receipt of the Department of Corrections December 29, 1971 letter and the accompanying purchase estimate, the Office of Procurement referred them to the Communications Division where an employee of the division recognized Conley Enterprise as being owned or operated by an employee of the Department of Corrections.

In a memorandum dated January 12, 1972, Mr. E. Stewart Naschke, Communications Engineer, informed Mr. John Babich, Purchasing Manager of the Office of Procurement, that:

"We [the Communications Division] have reason to believe that the referenced vendor [Conley Enterprise] may be owned or operated by a current employee of the Department of Corrections. Thus, there may be conflict with Section 19251 of the Government Code. You may wish to investigate this possibility before taking further action on the estimate."

He also indicated that he thought that type of system was available from at least one other vendor.

THE OFFICE OF PROCUREMENT OBTAINED A "BID" ON THE PERSONAL
SECURITY SYSTEM FROM CONLEY ENTERPRISE, THEN ASKED THE
DEPARTMENT OF CORRECTIONS WHAT TO DO IN VIEW OF THE FIRM'S
OWNERSHIP BY A DEPARTMENT OF CORRECTIONS EMPLOYEE

On February 10, 1972, the Office of Procurement mailed an invitation to bid and bid form to Conley Enterprise requesting a bid on the Conley Model "B" system wanted by San Quentin Prison.

Not surprisingly on the bid opening date, March 3, 1972, Conley Enterprise was found to be the sole bidder for the Conley Model "B" system.

In a letter dated March 13, 1972 from Mr. Lawrence R. Robinson, Jr., Director of the Department of General Services, to Mr. R. K. Procunier, Director of the Department of Corrections, Mr. Robinson noted that "the bid [from Conley Enterprise] has not been awarded as yet because we have learned that the bidder, R. E. Huber, Managing owner of Conley Enterprise, is currently employed by the State Department of Corrections".

THE DEPARTMENT OF CORRECTIONS TOLD THE DEPARTMENT OF GENERAL SERVICES THAT THERE APPEARED TO BE NO CONFLICT OF INTEREST IN AWARDING THE SAN QUENTIN PERSONAL SECURITY SYSTEM "BID" TO MR. HUBER

The Director of the Department of Corrections in a letter dated March 20, 1972 (See Appendix B for the full text of the letter) responded to the Director of General Services that "an informal opinion from the Attorney General's Office" supported the view that "there does not appear to be a conflict of interest or any problem with incompatible activities on the part of Mr. Huber.

The requests to purchase the Conley alarm system for San Quentin and other institutions were subsequently approved by the Department of General Services.

The question of possible conflict of interest regarding Mr. Huber's activities was not submitted in writing to the Attorney General's Office by the Department of Corrections. The assistant personnel officer of the Department of Corrections telephoned the Attorney General's Office about this potential conflict of interest. The response from the Attorney General's Office was in the form of a memorandum (See Appendix C for the full text of this memorandum) to which was attached a copy of an opinion to another unrelated conflict of interest question raised by a legislator. On the basis of this information, the department made its own decision that no conflict with Section 19251 existed in regard to Mr. Huber's activities.

FOLLOWING THE PURCHASE OF THE SAN QUENTIN
PERSONAL SECURITY SYSTEM, ADDITIONAL SYSTEMS
WERE PURCHASED FOR OTHER INSTITUTIONS

The Department of Corrections has purchased or is currently in the process of initiating the purchase of personal security systems from Mr. Huber for six institutions so far. On the basis of "purchase estimates" prepared for the acquisition of these systems, the price including tax will be about \$72,600 as follows:

| <u>Institution</u> | <u>Location</u> | <u>Estimated Cost</u> |
|--------------------------------|-----------------|---------------------------|
| California Institute for Men | Chino | \$ 8,247 |
| California Medical Facility | Vacaville | 22,853 |
| Folsom State Prison | Represa | 26,805 |
| San Quentin State Prison | San Quentin | 8,303 |
| Correctional Training Facility | Soledad | 4,928 |
| Deuel Vocational Institution | Tracy | <u>1,478</u> |
| | | <u>\$72,614</u> |

The above estimated costs include sales tax but do not include the cost of installation and miscellaneous electrical material needed to hookup the alarm system components.

FINDINGS

1. MR. HUBER'S DUTIES AS OWNER MANAGER OF CONLEY ENTERPRISE APPEAR TO BE INCOMPATIBLE WITH HIS DUTIES AS A STATE EMPLOYEE.

Mr. Huber's role as owner manager of Conley Enterprise appears to be incompatible with his role as a state employee with the job responsibility as described in the California State Personnel Board specification for Chief of Plant Operations (See Appendix D), to plan and supervise the operation of the inter-communication and all other electrical systems at Folsom State Prison. The Conley personal security alarm devices are a part of the electrical system.

Section 19251 of the Government Code prohibits "...the performance of an act in other than his capacity as a state officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by such officer or employee or the agency by which he is employed".

2. ALTHOUGH THE DEPARTMENT OF CORRECTIONS CITED THE URGENT NEED FOR PERSONAL SECURITY SYSTEMS AT SAN QUENTIN STATE PRISON AS A REASON FOR THEIR SOLE SOURCE PROCUREMENT FROM MR. HUBER, THE DEPARTMENT HAS SHOWN NO GREAT HASTE IN ACTUALLY INSTALLING THE DEVICES IN ITS OTHER INSTITUTIONS.

The request to purchase the Conley alarm system for San Quentin State Prison was made four years after the need for such a system was determined at the Correctional Training Facility at Soledad.

The Conley Enterprise personal security alarm devices purchased for the Correctional Training Facility at Soledad in August 1972 to complete the personal security alarm system for this institution had not been installed as of April 10, 1973.

Conley Enterprise personal security alarm devices purchased in December 1972 for Folsom State Prison costing \$26,805 have not been installed as of March 30, 1973.

A handwritten signature in cursive script, reading "Walter J. Quinn".

Walter J. Quinn
Acting Deputy Auditor General

May 10, 1973

Staff: Robert Neves
Ralph Sugimoto
Gerald Wentz

State of California

M E M O R A N D U M

C
O
P
Y

To: R. K. Procunier
Director
Department of Corrections
714 P Street
Sacramento, California

Date: March 13, 1972

File No.:

From: Department of General Services

Subject: California State Prison, San Quentin, Purchase Estimate 306,
Sheets 1-4

On March 3, 1972, our Office of Procurement opened Bid Invitation No. F11-5344 covering one Conley Enterprise Model "B" complete alarm system, for San Quentin Prison.

The sole bid received was submitted by Conley Enterprise, 3042 Stanford Lane, El Dorado Hills, California 95630. The bid was signed by a Mr. R. E. Huber and quoted a price of \$7,946.90, plus sales tax, with cash discount terms of 1/2 of 1% for payment within 10 days. Copies of both the purchase estimate and bid response, as well as a Dun and Bradstreet report, are attached.

The bid has not been awarded as yet because we have learned that the bidder, R. E. Huber, managing owner of Conley Enterprise, is currently employed by the State Department of Corrections.

Our purpose in writing you is to bring this transaction to your personal attention, prior to an award to Mr. Huber, in the event the procurement action should be in conflict with internal Corrections policies concerning participation of your employees in selling equipment to the Department of Corrections.

In the interest of Mr. Huber, your department, and ours as well, we felt it advisable to secure a statement of your policy regarding this proposed transaction and its possible association with a State employee conflict of interest before we took any further action.

We shall suspend award action until we receive your reply.

Original signed--Lawrence R. Robinson, Jr.
Director of General Services

LAWRENCE R. ROBINSON, JR.
Director

Attachment
cc: J.S. Babich

State of California

M E M O R A N D U M

HUMAN RELATIONS AGENCY

C
O
P
Y

To: Mr. Lawrence R. Robinson
Director
Department of General Services
915 Capitol Mall
Sacramento, California 95814

Date: March 20, 1972

File No.:

Subject: Purchase Estimate 306
Conley Enterprise
Model B Alarm System

From: Department of Corrections, Sacramento 95814

As you suggested in your letter of March 13, 1972, regarding bid invitation No. F11-5344, I have reviewed this transaction.

I am familiar with the development of Conley Enterprise alarm system and the role of R. E. Huber with Conley Enterprise. There does not appear to be a conflict of interest or any problem with incompatible activities on the part of Mr. Huber. An informal opinion from the Attorney General's Office supports this view.

Therefore, I see no problem in awarding a contract to Conley Enterprise for their alarm system.

I appreciate your bringing this to my attention.

R. K. PROCUNIER
Director of Corrections

State of California

Department of Justice

Memorandum

To : Mr. Gary Hoig
Assistant Personnel Officer
Room 600, 714 P Street
Sacramento, California 95814

Date : March 20, 1972

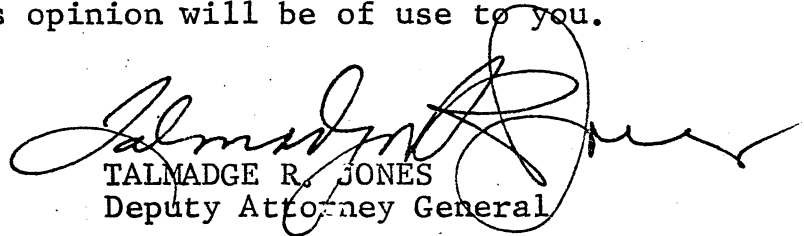
File No.:

From : Office of the Attorney General

Subject: Mr. R. E. Huber

With reference to our telephone conversations, we are attaching our opinion to the Honorable Edwin Z'berg, Assemblyman, Ninth District, No. 70-50, dated April 14, 1970, and reported at 53 Ops.Cal.Atty.Gen. 163 (1970), relative to the questions of conflict of interest and incompatibility.

We hope this opinion will be of use to you.



TALMADGE R. JONES
Deputy Attorney General

TRJ:bh
attach.

CALIFORNIA STATE PERSONNEL BOARD

specification

SCHEMATIC CODE: QF50
 CLASS CODE: 6749
 ESTABLISHED: 6/4/48
 REVISED: 12/7/72
 TITLE CHANGED: 10/7/60

CHIEF OF PLANT OPERATION III

Definition:

Under direction, to plan the work and supervise the staff engaged in the operation, maintenance, and protection of the physical plant of a large State institution or facility; to have charge of the operation, maintenance, and repair of the power plant and utility services, and the maintenance of structures; and to do other work as required.

Distinguishing Characteristics:

Incumbents in this class will be responsible for the maintenance and plant operation activities at a State institution or facility whose population is normally over 2,500 residents (or over 3,000 equivalent full-time students) including full-time employees; and which has a 3-year annual plant maintenance budget in excess of \$65,000.

Typical Tasks:

Plans and supervises the operation, maintenance, and repair of the heating, lighting, intercommunicating, water treatment, sewage disposal, air conditioning, ventilating and refrigerating systems and auxiliary equipment, including high pressure steam boiler units, gas and oil furnaces, transformers, chlorinators, pumps, compressors, condensers, steam lines, water lines, gas lines, steam traps, meters, and recorders; assigns and inspects the carpentry, masonry, and painting work required in the maintenance and repair of buildings and structures; supervises the installation, maintenance, and repair of laundry, kitchen, dairy, cannery, water and sewage plant and similar institution facilities and equipment, the upkeep of walks and roads, and the repair and construction of parts, tools, and fixtures; coordinates the work of skilled and semiskilled employees; checks and consults with the skilled craftsmen in the various repair shops on work progress and problems; inspects equipment and facilities to determine condition and need for repairs; estimates future equipment and material requirements; maintains blueprints and records of institution facilities; keeps records of equipment and operating data; prepares cost estimates for operation, maintenance and repair work; prepares reports; assists in the preparation and execution of plans for construction and building maintenance programs and such other related activities as may be delegated.

Minimum Qualifications:

Experience: Either

1. One year of experience performing the duties of a Chief of Plant Operation II in the California state service; or
2. Two years of experience performing the duties of a Chief of Plant Operation I or Chief Engineer II in the California state service; or

3. Three years of experience in the California state service performing the duties of a Chief Engineer I, Supervisor of Building Trades, or Vocational Work Experience Projects Supervisor; or
4. Three years of experience in charge of plant operation, in a facility with a population of at least 2,500 persons and employing a maintenance crew of at least 45 persons including both stationary engineers and building tradesmen.

and

Knowledges and abilities:

Knowledge of: types of heating, electrical, plumbing, water, refrigeration, sewage, and other mechanical systems and equipment; operation and maintenance of high-pressure steam boilers; materials, methods, and tools used in the maintenance of buildings and grounds; operation of mechanical refrigeration and air conditioning systems; thermostatic temperature control systems; rules and safety orders of the Division of Industrial Safety applicable to the operation and maintenance of buildings and grounds; principles of personnel management and supervision.

Ability to: read and write English at a level required for successful job performance; direct the work of installing, operating, and maintaining institution heating, electrical, water, sewage, and other mechanical systems; read, interpret, and work from plans, drawings, and specifications; make cost estimates of building repairs, maintenance, and mechanical installations; plan and execute a program of preventive maintenance for buildings and mechanical equipment; plan and direct the work of skilled craftsmen and semiskilled workers; keep accurate records and prepare reports; think and act quickly in emergencies.

and

Special personal characteristics: Willingness to live and work at a State institution; and tact.

Additional Desirable Qualification:

Education equivalent to completion of the twelfth grade.

Monthly Compensation: \$1273 1337 1405 1475 1548

Work Week Group: 4C

Note: Salary information for this class was correct on 2/21/73.
Any subsequent salary changes have not been recorded.